**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
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| Federal-State Joint Board on Universal Service | ) | CC Docket No. 96-45 |
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| 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms | ) | CC Docket No. 98-171 |
| | ) | |
| Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 | ) | CC Docket No. 90-571 |
| | ) | |
| Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size | ) | CC Docket No. 92-237<br>NSD File No. L-00-72 |
| | ) | |
| Number Resource Optimization | ) | CC Docket No. 99-200 |
| | ) | |
| Telephone Number Portability | ) | CC Docket No. 95-116 |

# REPLY

Comments filed on June 25, 2001 in this proceeding[1] demonstrate clearly that the Commission should continue using billed interstate and international end-user revenues

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[1] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, 1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, CC Docket No. 98-171, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, CC Docket No. 90-571, Administration of the North American Numbering Plan and North American Numbering

as a basis for assessing universal service contributions.[2] The flat-fee assessment mechanism favored by some commenters has been shown to be unlawful as well as administratively unworkable, and should not be adopted by the Commission. The Commission should also continue to allow rural incumbent local exchange carriers (ILECs) to recover the cost of contributing to federal universal service mechanisms via an explicit per-minute charge assessed upon users of interstate access service.

## I. Proposed Flat-Rate Assessment Mechanisms Would Unlawfully Impose Interstate Universal Service Costs on Intrastate Ratepayers, And Would Be Administratively Unworkable.

Commenters favoring a flat-rate assessment mechanism assert that this approach would alleviate problems in determining the interstate portion of bundled service revenues, reduce administrative complexity, and enhance the stability of the universal service assessment mechanism.[3] Worldcom also states that the current system imposes a disproportionately large share of the contribution obligation on established interstate long distance providers, even as revenues are declining, and imposes a disproportionately small share of the obligation on wireless carriers, whose revenues are growing.[4]

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Plan Cost Recovery Contribution Factor and Fund Size, CC Docket No. 92-237, NSD File No. L-00-72, Number Resource Optimization, CC Docket No. 99-200, Telephone Number Portability, CC Docket No. 95-116, *Notice of Proposed Rulemaking*, 66 Fed. Reg. 28718 (2001)(*NPRM*)

[2] Other parties favoring the current revenues-based methodology include United States Telecom Association (USTA), Qwest Communications, Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), Verizon, BellSouth, Universal Service Administrative Company (USAC), and National Telephone Cooperative Association (NTCA).

[3] *See, e.g.*, AT&T, Worldcom, Ad Hoc Telecommunications Users Committee, and Sprint.

[4] See Worldcom at 16.

As other commenters correctly explain, the flat-fee assessment approaches preferred by interexchange carriers (IXCs) are not permitted under the Act. Such assessments would have the effect of basing federal universal service contributions on both intrastate and interstate revenues, an approach that the 5th circuit court[5] has specifically found to be in violation of section 254.[6] As the Commission itself notes, using a flat-fee methodology would result in each customer being charged the same amount regardless of the overall size of their bill.[7] This would shift a disproportionate share of carriers' universal service contributions to customers that use little or no interstate services.[8] In fact, a flat fee assessment could result in some customers paying a universal service fee that is higher than their actual bill for long distance and other interstate services billed on a per-minute basis.[9]

The comments also make clear that flat-rate assessment mechanisms would impose far greater administrative costs than the current revenue-based mechanism. USAC, the entity charged with responsibility for administering the system, makes clear in its comments that moving from a revenue-based contribution scheme to one based on a flat end-user charge would create significant administrative hurdles.[10] USAC expresses concerns that it would need to create completely new billing, collection and auditing

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[5] *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 448 (5th Cir. 1999).

[6] See Verizon at 2, Qwest at 9, NTCA at 2, BellSouth at 3, USTA at 5.

[7] See NPRM at para. 29.

[8] OPASTCO at 5.

[9] *Id.* at 5-6.

[10] USAC at 16.

systems, and would need to resolve complex issues not found in a revenue-based system.[11]

Further, as NECA explained, experience gained under flat-rate assessment approach in effect prior to 1998 proved that this type of mechanism was only barely workable as applied to a few dozen carriers. Attempts to assess universal service contributions on the thousands of carriers involved in the current system would quickly break down into chaos.[12]

IXC concerns regarding the development of uniform end-user charges under a revenue-based system are unfounded. AT&T, for example, suggests that the Commission should mandate uniform end user assessments, and require carriers to remit, in full, these payments to the universal service administrator.[13] According to AT&T, this approach would shift the risk of non-collections from carriers to the fund, thereby avoiding the need for some carriers to assess high universal service rates to cover their uncollectibles.[14]

As NECA and OPASTCO point out, however, the Commission should not replace the current billed revenue assessment method with a system that relies on "collected" revenues because doing so would simply cause carriers with good collection practices to subsidize carriers with poor collection rates.[15] In addition, Verizon notes that changing to

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[11] *Id.* at 16-17.

[12] See NECA at 5.

[13] See AT&T at 3.

[14] Id. at 4-5.

[15] See NECA at 6-7, OPASTCO at 4.

a system based on current collected revenues will actually increase the administrative burden on carriers, by requiring carriers to report applicable revenues on a monthly instead of on the current quarterly basis.[16] AT&T's proposal to make the fund responsible for accounting for non-recovery would only shift the problem, not solve it, and allow carriers to avoid their statutory responsibility to make equal and nondiscriminatory contributions to the fund. It would inappropriately make the fund responsible for carriers' uncollectibles and raise serious issues of predictability and sufficiency for universal service funding.

The Commission also should reject "simplification" proposals that would require LECs to collect IXC universal service contribution amounts from end users.[17] Section 254(d) of the Act unequivocally requires all interstate carriers to contribute equitably to federal universal service mechanisms. Placing the collection burden entirely on LECs plainly violates this provision of the Act, regardless of whether LECs are designated as "agents" of IXCs for collection purposes.

IXC concerns regarding the migration of traffic from wireline to wireless services appear to have merit, however. As NECA explained in its comments, it is time for the Commission to re-examine the CMRS "safe harbor" percentage, which was established before the introduction of popular nationwide calling plans that appear to have shifted a substantial proportion of interstate toll usage from wireline to wireless services.[18]

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[16] See Verizon at 7.

[17] See Sprint at 10. See also MCI at 5, describing its proposed connection- and capacity-based approach where, "[t]he assessment obligation would fall on the carrier who has the relationship with the customer for whom the connection is made."

[18] Also see NTCA at 4 and SBC at 12.

In sum, the Commission should continue to use billed interstate end-user revenues as the basis for assessing universal service contributions. Flat-rate assessment mechanisms in the current telecommunications environment would be extremely difficult, perhaps impossible, to administer in a consistent and predictable way. In contrast, the current revenue-based approach assures that the costs of federal universal service programs are recovered from interstate carriers in proportion to usage, as required by section 254(d) of the Act. Moreover, interstate end revenues are easily measured, with clear and well-defined accounting definitions.[19] As a result, continuing the current revenue-based assessment mechanism will assure a specific, predictable and sufficient universal service fund, as required by the 1996 Act.

## II. The Commission Should Permit Rate of Return Carriers to Recover Universal Service Contributions via an Explicit Interstate Access Charge Element.

NECA agrees with Verizon that the Commission should give ILECs the same flexibility it accords IXCs in determining how to recover their universal service contributions.[20] In its initial comments, NECA urged the Commission to permit rate of return carriers to continue recovering the costs of contributing to federal universal service mechanisms via charges assessed upon interstate access customers.[21] Contrary to the suggestions of some commenters, universal service contributions are a "real cost of doing business" and may be flowed-through to IXC customers without running afoul of section

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[19] See USTA Comments at 5.

[20] See Verizon at 8.

[21] See NECA at 10.

254(e) of the Act.[22] To alleviate any concerns that this might be characterized as an impermissible "implicit" subsidy, however, NECA suggested that the Commission permit rate of return carriers to recover their universal service revenue requirements via a new, explicit per-minute charge, rather than include such costs in existing access rates.[23]

**Conclusion**

The Commission should continue to use billed interstate end-user revenue data to assess universal service fund contributions. Proposed flat rate assessment mechanisms should be rejected because they would unlawfully impose interstate universal service costs on interstate ratepayers and would also be administratively unworkable. The Commission also should reject any proposals that would require LECs to collect IXC universal service contribution amounts from end users, because placing the collection burden entirely on LECs plainly violates Section 254(d) of the Act. The Commission should allow rate of return carriers flexibility in determining how to recover their universal service contributions, including the option to recover their universal service contributions via an explicit interstate access charge element.

Respectfully submitted,

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By: ______________________

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[22] *Id.* at 10, *quoting* Southwestern Bell Tel. Co. v. FCC, 153 F.3d 523 (8th Cir. 1998).

[23] *Id.* at 12.

## CERTIFICATE OF SERVICE

I hereby certify that copy of the Reply was served this 9th day of July 2001, by electronic delivery or first class mail, to the persons listed below.

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